

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Surface Protection Industries
Incorporated.
3411 East 15th Street
Los Angeles, CA 90023
EPA ID No. CAD008258592

Respondents

Docket No. HWCA 2004-0627

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Surface Protection Industries Incorporated (Respondent) enter into this Consent Order and agree as follows:

1. Respondent is the Importer of Record for hazardous waste generated in Mexico. The hazardous waste was imported into the U.S. at the Otay Mesa Port of Entry. Respondent is a hazardous waste generator.
2. The Department conducted an inspection of a shipment of drums by the Respondent at the United States Customs Otay Mesa Port of Entry located on 9495 Customhouse Plaza, San Diego, California.
3. The Department alleges the following violations:
 - 3.1 The Respondent violated California Code of Regulations, title 22, section 66261.7 (r) in that on or about August 4, 2004, Respondent failed to properly manage four (4) 55-gallon metal drums that contained pourable quantities of flammable material. The drums were being managed as "empty" but contained pourable quantities

of flammable liquid, and should have been managed as a hazardous waste in accordance with the applicable provisions of the Hazardous Waste Control Laws and the implementing regulations.

3.2 The Respondent violated California Code of Regulations, title 22, section 66262.11 in that on or about August 4, 2004, Respondent failed to properly characterize a hazardous waste.

3.3 The Respondent violated Health and Safety Code section 25160, subdivision (b)(1) in that on or about August 4, 2004, Respondent transported four (4)-55-gallon metals drums that should have been handled as hazardous waste, without a Uniform Hazardous Waste Manifest.

3.4 The Respondent violated Health and Safety Code section 25163, subdivision (a)(2) in that on or about August 4, 2004, Respondent failed to have a valid registration while transporting four (4)-55-gallon metals drums that contained pourable quantities of flammable liquid. The drums should have been handled as a hazardous waste.

3.5 The Respondent violated California Code of Regulations, title 22, section 66263.23, subdivision (b) when it attempted to deliver four (4)-55-gallon metals drums, which should have been handled as hazardous waste, to a facility not authorized to receive the waste.

4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

5. Jurisdiction exists pursuant to Health and Safety Code section 25187.

6. Respondent waives any right to a hearing in this matter.

7. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

8. Respondent does not admit the violations alleged above, except as follows: Respondent admits the facts alleged above for the purposes of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., within 5 years of the effective date this order.

SCHEDULE FOR COMPLIANCE

9. Respondent shall comply with the following:

T9.1. Respondent has corrected the violations cited above.

Respondent shall operate hereafter in a manner that shall prevent recurrences of the violations cited herein.

9.2. Respondent shall manage, store, and dispose of hazardous waste in accordance with the Hazardous Waste Control Law (Health and Safety Code section 25100 et seq. and title 22, California Code of Regulations, division 4.5).

10. Submittals: All submittals from Respondents pursuant to this Consent Order shall be sent simultaneously:

To:

Yvonne Sanchez,
Branch Chief
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

To:

Juan Jimenez, Chief
Border Unit
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

To:

Ramon B. Perez
Senior Staff Counsel
9174 Sky Park Court, Suite 150
San Diego, California 92123

10.1. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondents in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondents shall be construed to relieve Respondents of their obligation to obtain such formal approvals as may be required.

10.2. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondents with recommended changes and a date by which Respondents must submit to the Department a revised document incorporating the recommended changes.

10.3. Compliance with Applicable Laws: Respondents shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.4. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondents to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.5. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondents, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondents may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.6. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the

progress of respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall permit such persons to take samples of any hazardous waste, suspected hazardous, or of materials suspected of producing hazardous waste. Any authority granted by this sub-section which is not otherwise granted by law shall expire after five years from the effective date of this order.

10.7. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondents' behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.8. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondents or its agents in carrying out activities pursuant to this Consent Order.

10.9. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondents pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.10. Extension Requests: If Respondents are unable to perform any activity or submit any document within the time required under this Consent Order, the Respondents may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.11. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11.1. Respondent shall pay the Department a total of \$12,000.00 in penalties, structured in the following manner: Within 30 days of the effective date of this Consent Order, Respondent shall submit a payment of \$7,000.00.

Respondents' check shall be made payable to Department of Toxic Substances Control, and shall be delivered to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To:

Yvonne Sanchez,
Branch Chief
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

To:

Juan Jimenez, Chief
Border Unit
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

To:

Ramon B. Perez
Senior Staff Counsel
9174 Sky Park Court, Suite 150
San Diego, California 92123

11.2. Respondent hereby agrees to send its employees to the specified California Compliance School (Modules I - IV). Attendance must be completed and the Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department within 185 days of the date of this Consent Order. In recognition of this educational investment, the penalty imposed by this Consent Order has been reduced by \$5,000 provided that the employees

satisfactorily complete the specified modules and the Department receives the Certificate of Satisfactory Completion within 185 days of the effective date of this Consent Order.

If the Respondent fails to submit the certificate as required, the penalty of \$5,000 is due and payable within 30 days after the 185-day period expires. The 185-day period may be extended by a Department Branch Chief upon a written request demonstrating good cause from the Respondent.

If Respondents fail to make payment as provided above, Respondents agree to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondents to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondents and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department

and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: February 15, 2005 Original signed by Joe Garcia, Jr.
Joe Garcia Jr.
Environmental Health and Safety Supervisor.
Surface Protection Industries Incorporated.

Dated: February 17, 2005 Original signed by Juan Manuel Jiminez
Juan Manuel Jimenez, Chief
Border Unit
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control